

LAKE COUNTY BOARD of ADJUSTMENT
April 8, 2015
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Sue Laverty, Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch

STAFF PRESENT: LaDana Hintz, Robert Costa, Lita Fonda

Sue Laverty called the meeting to order at 4:06 pm.

Frank offered two corrections on pg. 2 of the March minutes. In the last line of the 3rd paragraph from the bottom, "...calling this retail business" changed to "...calling this a retail business." In the first line of the last paragraph, 'product' changed to 'products'.

Motion made by Don Patterson, and seconded by Paul Grinde, to approve the March 11, 2015 meeting minutes as corrected. Motion carried, all in favor.

ROTHE CONDITIONAL USE—EAST SHORE

Robert Costa referred to the new plans received today that had been handed out to the Board. These were not reflected in the staff report. Some items addressed in the plans were missing in the report. He would go through those presently. Larger versions of a few photos from the staff report had also been handed out. He presented the staff report. (See attachments to minutes in the April 2015 meeting file for staff report.)

Robert noted the original site plan showed calculations with 12,500 square feet of slope disturbance within 300 feet [of the lake]. Those slope disturbances weren't exactly identified. The new site plan showed the disturbed areas and an amount that increased from previously. He hadn't had a chance to review today's submittal. The calculated amount looked closer to the staff estimate of about 15,000. The main concern with knowing the amount of disturbance was typically to make sure they could do the work they needed to do and that the Board had reviewed it and approved it as appropriate. As long as the appropriate erosion controls were put in and mitigated for impacts, generally the conditional use could be [inaudible] with the criteria.

Robert pointed to discussion in the staff report as to whether or not the structure was being placed on slopes. Today's materials showed the footings. That was getting closer to addressing what staff wanted. The report included a condition that the applicants submit these plans. He recommended that the Board keep that condition in. Today's submission probably addressed this but there hadn't been time to review this yet. He wanted to make sure that they addressed what they needed.

For the stormwater management plan, Robert had received an email that demonstrated the applicants proposed six basins or chambers. The engineer who proposed the drainage plan demonstrated that it would work, with the right amount and the ability to handle the

stormwater. The location of the stormwater basins needed to be verified as outside the 50-foot buffer so he suggested keeping the related condition for this.

Robert explained staff tried to help the applicants get to where they could fill in some of the missing information and get this towards something that could possibly be approved rather than recommending denial,. These applicants went out of their way to try to supply more information. He thought that with the conditions proposed and working with Mark Johnson, the architect, they could get this where it needed to go. He moved on to the proposed findings.

Frank asked for clarification on non-attached steps. Robert said the applicants originally thought of concrete steps extending from the foundation of the structure into the buffer area. They could use heavy stone steps instead that might be next to the foundation but there would be some amount of separation. It wouldn't be part of the structure. They could also try to redirect the stairs into another area. The non-attachment was separation from the foundation.

Steve turned to condition #1, which talked of disturbance of more than 500 square feet. It seemed like often a limit on the amount to be disturbed was included. Robert replied the amount proposed by the applicants didn't seem to be an accurate reflection of what needed to be done. Based on today's submission showing a new calculations, this concern was correct. He tried to form a recommendation for approval where it wasn't locked in because something was missing for a realistic amount. If the Board was comfortable with what had been submitted showing the actual areas to be disturbed and the calculations, they could put in the number of approximately 14,130. The Board could leave the condition as it was, and if corrections came in, staff could work with it that way. It was up to the Board, depending on what they were comfortable with. Typically, the applicants would be locked in on something.

LaDana said the big point was that the applicants mitigated for what they did. They were trying to demonstrate that they were doing that. They weren't building on slopes over 25% and they were stabilizing the site. In the review, staff looked at whether the applicants were mitigating for what it was they proposed doing more than what the set number was. In this case, if they'd been locked in, this would have had to be re-reviewed next month. If the Board felt like locking them into a number now, that would be reasonable. Staff wanted to be sure the number was big enough that they were able to do what they needed without coming back. She confirmed for Steve that this number included disturbance during construction that would then be returned to its regular state and that this number included both permanent and temporary disturbances added together.

Frank thought that condition #3, which required further modifications to go through additional review and approval, covered it for him. Robert noted sometimes that could [specify review] by the Board of Adjustment or by Planning staff.

Steve observed that it wasn't uncommon to have one or two situations where something was overlooked by the applicant and a statement would be made like condition #4. In this case, there were eight of those. He and staff agreed that this was unusual. LaDana said that what sometimes happened was that an application came in on the last possible day on Wed afternoon and legal notice was due on Friday morning. Rather than bump them out another month, staff tried to work with what they had. The Board might see more of these. If the Board wasn't comfortable approving it, they needed to decide that as a Board. Staff tried to write it up as best they could with the available information, and they tried to work with the landowner and consultants to get the needed information. On some of the big projects, you don't know what you needed until you got into working on the staff report.

Frank asked about the professional surveyor required in condition #10 to determine the 50-foot setback. He thought the spirit was to accept reasonable plans whether they were done by a professional or the homeowner. LaDana answered that this condition had been used in other projects where they were building right to the property line. Staff wanted to make sure they weren't building in that 50-foot zone because applicants were already told a variance was required for that. Staff wanted that area marked so they knew it wasn't being built in. If they were building in it, staff would also know what was being put there. In this case, it might be the stairs, which they could have under the lakeshore regulations. Frank thought he could mark off his own 50-foot setback. Robert said if this was a case where the applicants proposed being 100 or 150 feet away, that could be considered. Frank said this was a philosophical issue. Robert said in this case they were right up [to the lakeshore], 51 or 52 feet away. LaDana said if the Board didn't want that in there, they could modify it. Other Board members indicated they wanted this left in. LaDana pointed out that issues had come up with this kind of thing before, and the County had been sued. That was why they were a little touchy on what was put in, and that was why the surveyor was included. They'd done this before.

Don Patterson said he'd seen and been to this property since he lived nearby. What they showed was what was there. His immediate questions were if the house could be seen from the road, which it couldn't be, and the sewerage issue, which got taken care of. Another house was going to be built to the south. It was a great area to be in. Sue mentioned she'd driven by. The road access looked pretty dangerous the way it was right now.

Mark Johnson, the project architect, introduced Mark Liechti, the project's civil engineer from APEC Engineering. Mark J showed a site diagram and overviewed the site and its features. The driveway was currently steep and narrow. With expanded use, a better approach would be better and safer. A regrading of a portion of the driveway with a better transition into the first slope would also be safer. He confirmed for Sue that the existing drive down to the proposed building site would be improved. The grade would be slightly adjusted and they needed to do some grading and retaining. He showed the detached garage and vehicle maneuvering space on the diagram.

Mark J described the steps in question. These were from the patio. The lower level of the house was slightly above the grade of the site. The steps would be large stones for steps that would not be physically attached to the structure of the building. Another large stair went from the lower patio level to the main deck off the living room. Those were entirely out of the setback.

Mark J spoke about the surveyor. There would be one. The project personnel prided themselves on doing a professional job and trying to make every project a model for the way to handle these projects in these sensitive areas. A surveyor was important and everyone would feel a lot better if they had more control. They started the project with an accurate survey and used a landscape architect. The Rothes were Flathead Lakers members who took pride in this project.

Regarding the square footage on slope disturbance, Mark J thought they were trying to capture all of that. They'd left off the excavation for the trenching. They were going to use the Best Management Practices for the construction and mitigate potential negative results during construction. It was important. Things were designed so when the project was done, they would leave in erosion control measures until things were stabilized and replanted. They would make sure it worked right.

Mark J said he had trouble figuring out the height measurement. The building would not be visible. It would be below the top of the last forested bench. This project was more horizontal in its expression rather than a narrow, tall building. He showed some locations. The trees would tend to obscure the house. You would see it when the leaves fell off.

Don referred to the turn off of the highway shown on the Mark J's first diagram and the trees and vision. Would it be easier to see onto Hwy 35 than it was at present? Mark J showed where the current approach was. It would be widened and the grade there would be lessened. Mark J thought a number of trees would probably have to go. He described the drive with the diagram. He described the portion that he believed would be paved. He showed an area where the thought was to have gravel. Water could be channeled into the storm water system there and wouldn't be causing erosion.

Steve said the idea of the conditional use review was to make sure the increase in impacts due to building and disturbance were mitigated somehow. One way would have been to see the developed area further from the lake. They were already pushing the 50-foot limit. In the new drawings, the 50-foot line crossed what appeared to be a stone patio. Mark J said that was more of a path. A deck was on the main level with a patio below it. The deck and patio were the same size. Steve asked what landscaping was planned on the slope [by the stone walkway]. Mark J said the proposal was for native restoration. The plan was in keeping with the native buffer strip that was in there, even outside of the 50-foot buffer. This was aside from possible adjacent areas to the building to create a fire-defensible zone.

Steve thought it would be a challenge to do this construction without enough space to drive construction equipment around the outside of the building. Mark J said their point was they wanted to do the project and restore it faithfully. He thought they had enough space to do this. The portions further from the building were sonitube locations and things like that. Steve checked on the limitations for paths inside the 50-foot buffer and lakeshore protection zones. Robert listed a width of 4 feet for things with stairs. East Shore zoning specified that footpaths shall not exceed 6 feet in width in the 20-foot to 50-foot area. Steve asked if other impervious requests had been made in the 50-foot buffer. Robert didn't know of any. Mark J described a gravel path that went out to the dock. This property had been used with a minimal amount of impact. They wanted to keep it that way. Steve questioned whether the objectives Mark J talked about could really be implemented for a development this size, this close to the lake.

Mark J said they respected the 50-foot. If there was a concern about the steps, they could discuss it. Steve suggested moving the house back. LaDana reminded they needed a drainfield location and they also proposed a heat pump system. You could see how they tried to make those fit in to make those things work. The only building site left was this one. Steve thought disturbing a little more slope and moving it a little bit farther from the lake would leave some room in front of the house for the walkways and recontouring and revegetation before you actually got to the 50-foot buffer.

Mark J thought they were trying to respect the spirit of the 50-foot buffer strip. They understood the value of it. He'd be concerned with some contractors. This contractor prided himself on doing some of the best projects in the valley. They were known for good, conscientious, well-done projects that were constantly supervised. That was another aspect of the stormwater mitigation and erosion control measures. They were all signed on to make sure that those were in place and effective throughout construction.

Steve talked with Mark J about the stormwater features from roof and deck. Mark Liechti showed where these features would be located. Going back to the 50-foot setback and construction, he knew the contractor and wouldn't be surprised if the contractor put a fence up right along the 50-foot buffer and told his construction crews not to cross it for the duration of the construction phase. He described more details of the stormwater management. Steve asked if these were outside the 50-foot buffer. Mark L thought they were right at the corner of it. They might have to shift them back and get them outside. They had room for that.

LaDana commented the Board often didn't see the pathways and such that were proposed. Sometimes the planners didn't see them until the applicants came in later to ask for those things. At least the applicants were pointing these out at this point. They didn't have to include that on this application. They could have submitted it later, after the building was done. What they requested was allowed under the zoning and if it was submitted later, they wouldn't need to ask the Board.

Steve said he was back to the situation where when someone asked for a variance or conditional use, it was something that wasn't permitted, and the reason for that was it

created impacts outside of what was deemed acceptable. If you were going to ask for a conditional use or variance, the idea was to show how you were going to make up for the bigger impacts than you would normally have. The applicants showed they designed for the stormwater and talked about maintaining the buffer zone. One thing that could have been done in this case such that he would have felt good about the size of the development was to include a larger buffer because the impacts were from a much larger development than was typical. They were asking not for an extra one or two hundred feet of disturbed area, they were asking for an extra 14,000 feet of disturbed area. This was a major development, compared to what the zoning regulations were set up for. He would like to see mitigation comparable to the size of the impact. He didn't quite see that.

Mark J said if they had space to observe a 75-foot buffer, they might have done that. The area down there didn't allow it. The existing road was backed up against the bench that was primarily created when they benched out the orchard areas. It was fairly steep. Even at that, they were pushing back into that. There was some mitigation. LaDana said if you did push that back, you'd dig more in there and need steep retaining walls and so forth. Mark J explained that if you looked at the contours, they were back into this hill.

Frank commented that zoning was the best attempt that people made rather than something perfect. If the applicants complied with the regulations, he didn't think it was fair to impose more restrictions. The bigger the project, the more it cost. The bigger projects that were well-funded had the money to mitigate the impacts. He liked to see these places from the lake. He saw all the trees he needed to see. He thought this project met the goal. It seemed to be a low-impact environmental project. Sue agreed. She saw Steve's point. It was a big project. She thought they were mitigating it a lot.

Steve asked about condition #1, which didn't have a limit on the amount of disturbed slopes. Would the applicants be comfortable with that saying something like 'not to exceed 15,000 square feet'? Mark L thought they'd be comfortable. Mark J agreed. Steve said if they were going to approve this, he'd like to make it look like other approvals. Several things made this one look different. There were 8 conditions where they wouldn't get their zoning conformance permit unless they submitted more information. LaDana thought happened frequently lately, while trying to work with landowners to get the information in to be reviewed and make sure it still complied with the regulations. In this case, it was a giant project and that was unusual. Robert thought there had been projects with a lot of mitigating factors like this, before Steve came in 2013. LaDana said it made sure they had enough information to make sure it complied, but still allowed the Board to review the concept of it. The two things the Board had to review were the height and the disturbance. They could comply with the rest without coming to the Board. Paul said he'd worked on projects under these conditions. He assured the Board you didn't get a zoning conformance permit until staff were happy that these conditions were met.

Sue said they were talking about not exceeding 15,000 square feet. She suggested including also 'without further review and approval by Lake County', like they had in condition #3. It put everyone on notice and was more limiting. If it did go over, staff

could review it. [The added phrase] made it really clear. Mark J didn't think there'd be a problem with the 15,000. What they saw was what they were going to get. Robert said the statement would then say something like for the disturbance of approximately 15,000 square feet of slopes; more disturbance than this amount requires review and approval prior to the disturbance.

Public comment opened: None offered. *Public comment closed.*

Steve asked about the 8.44 acres. Robert explained that when Mark J originally came with this proposal, this lot was tied with another lot owned by the applicants across the highway. Mark J and the owners worked with Sands Surveying to get a legal easement recognized by MDT that separated the two properties. Now, based on Sands Surveying and what was recorded with the Lake County Clerk & Recorder, it was now 9.16 acres. Mark J added that part of this was the additional area allowed by survey law now where they could now claim to low water. Robert added this was only off the Reservation. Mark L noted in some situations it made a big difference, if you were on something like a point. In high water, your frontage might be 200 feet. In low water, you might get 280 feet. You might get more dock space.

Motion made by Frank Mutch, and seconded by Paul Grinde, to approve the conditional uses with findings of fact, conditions and terms, including the change discussed for condition #1. Motion carried, all in favor.

OTHER BUSINESS (5:08 pm)

There would be something for next month.

Robert mentioned when the board members wanted to make a requirement or condition based on a proposal, case law considered that an exaction. The courts determined over time that when you do an exaction, there were 2 main considerations on what you were doing. One was that whatever the requirement was, it had to be related to what's being considered. In today's case that would be the conditional use to disturb slopes and the height. The second thing the courts determined you had to think about was whether what you proposed truly balanced the impacts. It was a delicate line. More discussion orbited around mitigation and amount of information available.

LaDana mentioned a legislative bill that Lake County sponsored touching on Board of Adjustment appeals to district court, which gave the option to either go to district court or to the Commissioners.

Robert gave updates on a couple of Board-issued items.

Sue Lavery, chair, adjourned the meeting at 5:27 pm.